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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,845	10/30/2003	James Baechle	4094	2844
23699	7590	10/07/2005		
CLAUSEN MILLER, P.C SUITE 1600 10S. LASALLE STREET CHICAGO, IL 60603			EXAMINER FIDEI, DAVID	
			ART UNIT	PAPER NUMBER
			3728	
DATE MAILED: 10/07/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/605,845	<b>Applicant(s)</b> BAECHLE, JAMES	
	<b>Examiner</b> David T. Fidei	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 14-17 is/are rejected.
- 7) ☒ Claim(s) 5-13 and 18-28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1, 2, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Farley (Patent no. 5,154,297). A packaging assembly for holding a product is disclosed by Farley with the assembly comprising; at least one longitudinal support post 40, each post having a top end and a bottom end and integrally formed locking tabs (formed by the L-shape, see page 15, paragraph [0030] of the specification where the shape itself is alleged prevent laterally movement) disposed at the bottom end; and a base 14 having openings at 36 disposed therein, the openings being configured to receive the bottom ends of the support posts in interlocking fashion.

As to claim 2, the openings formed by sections 36 are located at the corners.

Claims 14 and 15 are similar to claims 1 and 2 as treated in the previous paragraphs.

3. Claim 1, 2, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Mertz (Patent no. 5,277,310). A packaging assembly for holding a product is disclosed by Mertz with the assembly comprising; at least one longitudinal support post 40, each post having a top end and a bottom end and integrally formed locking tabs (formed by the L-shape) disposed at the bottom end; and a base 8 having openings 19 disposed therein, the openings being configured to receive the bottom ends of the support posts in interlocking fashion.

As to claim 2, the openings 19 are located at the corners.

Claims 14 and 15 are similar to claims 1 and 2 as treated in the previous paragraphs.

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*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1, 2, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farley (Patent no. 5,154,297) in view of Wind (Re. 32,344). A packaging assembly for holding a product is disclosed by Farley with the assembly comprising; at least one longitudinal support post 40, each post having a top end and a bottom end and integrally formed locking tabs (formed by the L-shape, see page 15, paragraph [0030] of the specification where the shape itself is alleged prevent laterally movement) disposed at the bottom end; and a base 14 having openings at 36 disposed therein, the openings being configured to receive the bottom ends of the support posts in interlocking fashion. To the extent that the base of Farley is not unitary, Wind discloses the construction of a unitary plastic base as is well known to those skilled in the art.

It would have been obvious to one of ordinary skill in the art to modify the base of Farley by constructing an unitary member as taught by Wind, in order to provide a more readily manufactured.

As to claim 2, the openings formed by sections 36 are located at the corners.

Claims 14 and 15 are similar to claims 1 and 2 as treated in the previous paragraphs.

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7. Claims 3, 4, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farley (Patent no. 5,154,297) in view of Admitted Prior Art. The difference between the claimed subject matter and Farley resides in each support post is formed from a sheet of paper wound into a tubular structure comprising an outer wall and an inner, product-facing wall substantially coextensive with the outer wall and joined to the outer wall at outer ends to define a hollow space therebetween. However, the specification page 14, paragraph [0037] cites this as admitted prior art stating numerous United States and foreign patents disclose such corner posts, "including Hughes U.S. Patent No. 5,267,651, Ortlieb U.S. Patent No. 5,593,039, Qiu U.S. Patent No. 6, 186,329, Muyskens U.S. Patent No. 6,247,596 and Stebelton U.S. Patent No. 6,513,662, all incorporated herein by reference".

As to claims 3 and 16, it would have been obvious to one of ordinary skill in the art to modify the corner post of Farley by employing each support post is formed from a sheet of paper wound into a tubular structure comprising an outer wall and an inner, product-facing wall substantially coextensive with the outer wall and joined to the outer wall at outer ends to define a hollow space therebetween as taught by the Admission, incorporated herein by reference, in order to provide more sturdy rigid corner support than that of a corrugated sheet.

Claims 4 and 17 merely defined the angled shape of the each side wall forming part of the corner post which would maintain the basic shape of the posts disclosed by Farley.

8. Claims 3, 4, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mertz (Patent no. 5,277,310) in view of Admitted Prior Art. employing the same logic applied in the paragraph 6 above, it would have been obvious to one of ordinary skill in the art to modify the assembly of Mertz by constructing each support post is formed from a sheet of paper wound into a tubular structure comprising an outer wall and an inner, product-facing wall substantially coextensive with the outer wall and joined to the outer wall at outer ends to define a hollow space therebetween and a base made of EPS for the same reasons, incorporated herein by reference.

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*Allowable Subject Matter*

9. Claims 5-13 and 18-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

10. Applicant's arguments filed July 20, 2005 have been fully considered but they are not persuasive. Claims 1 and 14 have been amended to recite a unitary base where the prior art references to Farley and Mertz have a plurality of piece constructed by connected together.

The Examiner is not convinced the mere changing of this terminology is sufficient to define over the Farley or Mertz. It is long established the meaning of the term "integral" is not restricted a narrow interpretation only to mean an undivided or monolithic construction. The term integral was held not to be limited to a fabrication of the parts from a single piece of metal, but was inclusive of other means for maintaining the parts fixed together as a single unit. In re Larson et al., 340 F.2d 965, 144 U.S.P.Q. 347 (C.C.P.A. 1965). "Integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. In re Hotte, 475 F.2d 1009, 148 U.S.P.Q. 326 (C.C.P.A. 1973). Accordingly, a device is unitary where the constituent parts are so combined so as to constitute a unitary whole. As such the bases of both Farley and Mertz are considered unitary in this sense. For this reason the rejections have been maintained.

Moreover, to the extent that the prior art is not considered unitary in the above sense, to construct the device unitary that was formally of multiple pieces is a matter of ordinary skill. A claim to a fluid transporting vehicle was rejected as obvious over a prior art reference which differed from the prior art in claiming a brake drum integral with a clamping means, whereas the brake disc and clamp of the prior art comprise several parts rigidly secured together as a single unit. The court affirmed the rejection holding, among other reasons, "that the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice, see M.P.E.P. § 2144.04 V(B). Even if weight is given to the language as accorded by applicant, it would have been obvious to one of ordinary skill in the art

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to base of Farley or Metz of a unitary construction. Particularly where the prior art fails to show a perceived need for the use of unitary structure where the result is contrary to the expectations and understandings of the prior art.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


12. Any inquiry concerning this communication or earlier communications from the Examiner concerning the merits of the claims should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
August 8, 2005